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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,964	12/14/2001	Heidi Riedel	Beiersdorf 755-KGB	7321
7055 7590 05/02/2007 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER KANTAMNENI, SHOBHA	
			ART UNIT	PAPER NUMBER
			1617	
			NOTIFICATION DATE	DELIVERY MODE
			05/02/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/016,964

Applicant(s)

RIEDEL ET AL.

Examiner

Shobha Kantamneni

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: _____.
Claim(s) rejected: 18-43.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See page 2.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).
13. ☐ Other: _____.



**SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER**

Continuation of 11:

Applicant's arguments with respect to the rejection of claims under 35 U.S.C. 103(a) as being unpatentable over Bellon et al., and rejection of Claims 18-22, 28-33, 35, 42-43 under 35 U.S.C. 102(b) as being anticipated by Beutler et al. (US 4,808,388, PT0-1449) have been fully considered, but not found persuasive as discussed in the final office action. The rejections are MAINTAINED

Rejection of Claim 42:

Applicant argues that "Applicants respectfully submit that PENSKA does not contain the slightest indication that the oil-in-water emulsions of Examples 6 and 7 of PENSKA are self-foaming and/or foam-like". This argument has been fully considered, but not found persuasive because Penske discloses compositions comprising the same ingredients as instantly claimed i.e a gaseous ingredient, 3 % by weight of stearic acid, 0.5 % by weight of cetyl alcohol, 0.5 % by weight of peg-100 stearate, and thus would inherently possess the properties such as self-foaming as instantly claimed.

Applicant argues that " the composition of Example 1 of MARILYN does not contain an emulsifier B as recited in claim 42." This argument has been considered, but not found persuasive because Marilyn discloses self foaming shave cream compositions comprising 6.58 % by weight of palmitic acid, 0.97 % by weight of stearyl alcohol, 0.15 % by weight of PEG-150 stearic acid diester, and about 3.24 % of a propellant. It is also disclosed that the PEG distearate, a fatty acid diester of the polyethylene glycol should have a molecular weight of at least about 1000, preferably at least about 6000, and thus meets the instant limitation of 5 to 100 ethylene glycol units.